



March 25, 2005

ENGROSSED HOUSE BILL No. 1776

DIGEST OF HB 1776 (Updated March 23, 2005 6:30 pm - DI 106)

Citations Affected: IC 35-33; IC 35-47.

Synopsis: Seizing weapons from a dangerous individual. Permits a law enforcement officer to seize a firearm possessed by an individual whom the officer reasonably believes to be dangerous. Requires the firearm to be returned to the individual within 14 days unless a court finds that the individual is dangerous and that retention of the firearm by the law enforcement agency is appropriate. Permits a court to issue a search warrant for a firearm possessed by an individual believed to be dangerous if certain conditions are met. Permits a person from whom a firearm has been seized and ordered retained to petition a court for return of the firearm after 180 days. Authorizes a court to order a firearm retained by a law enforcement agency to be destroyed or otherwise disposed of after five years. Makes conforming amendments.

Effective: July 1, 2005.

Buell, Brown C, Ruppel, Mahern
(SENATE SPONSORS — MILLER, STEELE)

January 19, 2005, read first time and referred to Committee on Public Safety and Homeland Security.

February 10, 2005, amended, reported — Do Pass.

February 15, 2005, read second time, amended, ordered engrossed.

February 16, 2005, engrossed.

February 17, 2005, read third time, passed. Yeas 100, nays 0.

SENATE ACTION

February 24, 2005, read first time and referred to Committee on Judiciary.

March 24, 2005, amended, reported favorably — Do Pass.

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EH 1776—LS 7546/DI 106+



March 25, 2005

First Regular Session 114th General Assembly (2005)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2004 Regular Session of the General Assembly.

ENGROSSED HOUSE BILL No. 1776

A BILL FOR AN ACT to amend the Indiana Code concerning criminal law and procedure.

Be it enacted by the General Assembly of the State of Indiana:

SECTION 1. IC 35-33-5-1 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 1. (a) A court may issue warrants only upon probable cause, supported by oath or affirmation, to search any place for any of the following:

- (1) Property which is obtained unlawfully.
- (2) Property, the possession of which is unlawful.
- (3) Property used or possessed with intent to be used as the means of committing an offense or concealed to prevent an offense from being discovered.
- (4) Property constituting evidence of an offense or tending to show that a particular person committed an offense.
- (5) Any person.
- (6) Evidence necessary to enforce statutes enacted to prevent cruelty to or neglect of children.
- (7) **A firearm possessed by a person who is dangerous (as defined in IC 35-47-13-1).**
- (b) As used in this section, "place" includes any location where

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property might be secreted or hidden, including buildings, persons, or vehicles.

SECTION 2. IC 35-33-5-5 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 5. (a) All items of property seized by any law enforcement agency as a result of an arrest, search warrant, or warrantless search, shall be securely held by the law enforcement agency under the order of the court trying the cause, except as provided in this section.

(b) Evidence that consists of property obtained unlawfully from its owner may be returned by the law enforcement agency to the owner before trial, in accordance with IC 35-43-4-4(h).

(c) Following the final disposition of the cause at trial level or any other final disposition the following shall be done:

(1) Property which may be lawfully possessed shall be returned to its rightful owner, if known. If ownership is unknown, a reasonable attempt shall be made by the law enforcement agency holding the property to ascertain ownership of the property. After ninety (90) days from the time:

(A) the rightful owner has been notified to take possession of the property; or

(B) a reasonable effort has been made to ascertain ownership of the property;

the law enforcement agency holding the property shall, at such time as it is convenient, dispose of this property at a public auction. The proceeds of this property shall be paid into the county general fund.

(2) Except as provided in subsection (e), property, the possession of which is unlawful, shall be destroyed by the law enforcement agency holding it sixty (60) days after final disposition of the cause.

(3) A firearm that has been seized from a person who is dangerous (as defined in IC 35-47-13-1) shall be retained, returned, or disposed of in accordance with IC 35-47-13.

(d) If any property described in subsection (c) was admitted into evidence in the cause, the property shall be disposed of in accordance with an order of the court trying the cause.

(e) A law enforcement agency may destroy or cause to be destroyed chemicals or controlled substances associated with the illegal manufacture of drugs or controlled substances without a court order if all the following conditions are met:

(1) The law enforcement agency collects and preserves a sufficient quantity of the chemicals or controlled substances to

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demonstrate that the chemicals or controlled substances were associated with the illegal manufacture of drugs or controlled substances.

(2) The law enforcement agency takes photographs of the illegal drug manufacturing site that accurately depict the presence and quantity of chemicals and controlled substances.

(3) The law enforcement agency completes a chemical inventory report that describes the type and quantities of chemicals and controlled substances present at the illegal manufacturing site.

The photographs and description of the property shall be admissible into evidence in place of the actual physical evidence.

(f) For purposes of preserving the record of any conviction on appeal, a photograph demonstrating the nature of the property, and an adequate description of the property must be obtained before the disposition of it. In the event of a retrial, the photograph and description of the property shall be admissible into evidence in place of the actual physical evidence. All other rules of law governing the admissibility of evidence shall apply to the photographs.

(g) The law enforcement agency disposing of property in any manner provided in subsection (b), (c), or (e) shall maintain certified records of any such disposition. Disposition by destruction of property shall be witnessed by two (2) persons who shall also attest to the destruction.

(h) This section does not affect the procedure for the disposition of firearms seized by a law enforcement agency.

(i) A law enforcement agency that disposes of property by auction under this section shall permanently stamp or otherwise permanently identify the property as property sold by the law enforcement agency.

(j) Upon motion of the prosecuting attorney, the court shall order property seized under IC 34-24-1 transferred, subject to the perfected liens or other security interests of any person in the property, to the appropriate federal authority for disposition under 18 U.S.C. 981(e), 19 U.S.C. 1616a, or 21 U.S.C. 881(e) and any related regulations adopted by the United States Department of Justice.

SECTION 3. IC 35-47-2-3 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 3. (a) A person desiring a license to carry a handgun shall apply:

(1) to the chief of police or corresponding law enforcement officer of the municipality in which the applicant resides;

(2) if that municipality has no such officer, or if the applicant does not reside in a municipality, to the sheriff of the county in which the applicant resides after the applicant has obtained an

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application form prescribed by the superintendent; or
 (3) if the applicant is a resident of another state and has a regular place of business or employment in Indiana, to the sheriff of the county in which the applicant has a regular place of business or employment.

(b) The law enforcement agency which accepts an application for a handgun license shall collect a ten dollar (\$10) application fee, five dollars (\$5) of which shall be refunded if the license is not issued. Except as provided in subsection (h), the fee shall be:

- (1) deposited into the law enforcement agency's firearms training fund or other appropriate training activities fund; and
- (2) used by the agency for the purpose of:
 - (A) training law enforcement officers in the proper use of firearms or other law enforcement duties; or
 - (B) purchasing for the law enforcement officers employed by the law enforcement agency firearms, or firearm related equipment, or both.

The state board of accounts shall establish rules for the proper accounting and expenditure of funds collected under this subsection.

(c) The officer to whom the application is made shall ascertain the applicant's name, full address, length of residence in the community, whether the applicant's residence is located within the limits of any city or town, the applicant's occupation, place of business or employment, criminal record, if any, and convictions (minor traffic offenses excepted), age, race, sex, nationality, date of birth, citizenship, height, weight, build, color of hair, color of eyes, scars and marks, whether the applicant has previously held an Indiana license to carry a handgun and, if so, the serial number of the license and year issued, whether the applicant's license has ever been suspended or revoked, and if so, the year and reason for the suspension or revocation, and the applicant's reason for desiring a license. The officer to whom the application is made shall conduct an investigation into the applicant's official records and verify thereby the applicant's character and reputation, and shall in addition verify for accuracy the information contained in the application, and shall forward this information together with his recommendation for approval or disapproval and one (1) set of legible and classifiable fingerprints of the applicant to the superintendent.

(d) The superintendent may make whatever further investigation the superintendent deems necessary. Whenever disapproval is recommended, the officer to whom the application is made shall provide the superintendent and the applicant with the officer's complete and specific reasons, in writing, for the recommendation of

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disapproval.

(e) If it appears to the superintendent that the applicant has a proper reason for carrying a handgun and is of good character and reputation and a proper person to be so licensed, the superintendent shall issue to the applicant a qualified or an unlimited license to carry any handgun lawfully possessed by the applicant. The original license shall be delivered to the licensee. A copy shall be delivered to the officer to whom the application for license was made. A copy shall be retained by the superintendent for at least four (4) years. This license shall be valid for a period of four (4) years from the date of issue. The license of police officers, sheriffs or their deputies, and law enforcement officers of the United States government who have been honorably retired by a lawfully created pension board or its equivalent after twenty (20) or more years of service, shall be valid for the life of such individuals. However, such lifetime licenses are automatically revoked if the license holder does not remain a proper person.

(f) At the time a license is issued and delivered to a licensee under subsection (e), the superintendent shall include with the license information concerning handgun safety rules that:

- (1) neither opposes nor supports an individual's right to bear arms; and
- (2) is:
 - (A) recommended by a nonprofit educational organization that is dedicated to providing education on safe handling and use of firearms;
 - (B) prepared by the state police department; and
 - (C) approved by the superintendent.

The superintendent may not deny a license under this section because the information required under this subsection is unavailable at the time the superintendent would otherwise issue a license. The state police department may accept private donations or grants to defray the cost of printing and mailing the information required under this subsection.

(g) A license to carry a handgun shall not be issued to any person who:

- (1) has been convicted of a felony;
- (2) has had a license to carry a handgun suspended, unless the person's license has been reinstated;**
- ~~(2)~~ **(3)** is under eighteen (18) years of age;
- ~~(3)~~ **(4)** is under twenty-three (23) years of age if the person has been adjudicated a delinquent child for an act that would be a felony if committed by an adult; or

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(4) (5) has been arrested for a Class A or Class B felony, or any other felony that was committed while armed with a deadly weapon or that involved the use of violence, if a court has found probable cause to believe that the person committed the offense charged.

In the case of an arrest under subdivision (4); (5), a license to carry a handgun may be issued to a person who has been acquitted of the specific offense charged or if the charges for the specific offense are dismissed. The superintendent shall prescribe all forms to be used in connection with the administration of this chapter.

(h) If the law enforcement agency that charges a fee under subsection (b) is a city or town law enforcement agency, the fee shall be deposited in the law enforcement continuing education fund established under IC 5-2-8-2.

(i) If a person who holds a valid license to carry a handgun issued under this chapter:

- (1) changes the person's name; or
- (2) changes the person's address;

the person shall, not later than sixty (60) days after the date of the change, notify the superintendent, in writing, of the person's new name or new address.

(j) The state police shall indicate on the form for a license to carry a handgun the notification requirements of subsection (i).

SECTION 4. IC 35-47-13 IS ADDED TO THE INDIANA CODE AS A NEW CHAPTER TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]:

Chapter 13. Proceedings for the Seizure and Retention of a Firearm

Sec. 1. As used in this chapter, "dangerous" means:

(1) a person presents an imminent risk of personal injury to the person or to another person; or

(2) a person may present a risk of personal injury to the person or to another person in the future and the person:

(A) has a mental illness (as defined in IC 12-7-2-130) that may be controlled by medication, and the person has not demonstrated a pattern of voluntarily and consistently taking the person's medication while not under supervision; or

(B) is the subject of documented evidence that would give rise to a reasonable belief that the person has a propensity for violent or emotionally unstable conduct.

The fact that a person has been released from a mental health

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1 facility or has a mental illness that is currently controlled by
2 medication does not establish that the person is dangerous.

3 **Sec. 2. A circuit or superior court may issue a warrant to search**
4 **for and seize a firearm in possession of a person who is dangerous**
5 **if:**

6 (1) a law enforcement officer provides the court a sworn
7 affidavit:

8 (A) stating why the law enforcement officer believes the
9 person is dangerous and in possession of a firearm; and

10 (B) describing the law enforcement officer's interactions
11 and conversations with:

12 (i) the person who is alleged to be dangerous; or

13 (ii) another individual, if the law enforcement officer
14 believes that information obtained from this individual
15 is credible and reliable;

16 that have led the law enforcement officer to believe the
17 person is dangerous and in possession of a firearm;

18 (2) the affidavit specifically describes the location of the
19 firearm; and

20 (3) the circuit or superior court determines that probable
21 cause exists to believe that the person is:

22 (A) dangerous; and

23 (B) in possession of a firearm.

24 **Sec. 3. (a) If a law enforcement officer seizes a firearm from a**
25 **person whom the law enforcement officer believes to be dangerous**
26 **without obtaining a warrant, the law enforcement officer shall**
27 **submit to the circuit or superior court having jurisdiction over the**
28 **person believed to be dangerous a written statement under oath or**
29 **affirmation describing the basis for the law enforcement officer's**
30 **belief that the person is dangerous.**

31 (b) The court shall review the written statement described in
32 subsection (a). If the court finds that probable cause exists to
33 believe that the person is dangerous, the court shall order the law
34 enforcement agency having custody of the firearm to retain the
35 firearm. If the court finds that there is no probable cause to believe
36 that the person is dangerous, the court shall order the law
37 enforcement agency having custody of the firearm to return the
38 firearm to the person.

39 (c) This section does not authorize a law enforcement officer to
40 perform a warrantless search or seizure if a warrant would
41 otherwise be required.

42 **Sec. 4. (a) Unless a court orders the return of the firearm under**

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section 3(b) of this chapter, the law enforcement agency that seized the firearm shall retain custody of the firearm.

(b) If a court issued a warrant to seize a firearm under this chapter, the law enforcement officer who served the warrant shall, not later than forty-eight (48) hours after the warrant was served, file a return with the court, stating:

- (1) that the warrant was served;
- (2) the time and date on which the warrant was served;
- (3) the name and address of the person named in the warrant; and
- (4) the quantity and identity of any firearms seized by the law enforcement officer.

Sec. 5. (a) Not later than fourteen (14) days after a return is filed under section 4 of this chapter, or a written statement is filed under section 3 of this chapter, the court shall conduct a hearing to determine whether the seized firearm should be:

- (1) returned to the person from whom the firearm was seized; or
- (2) retained by the law enforcement agency having custody of the firearm.

(b) The court shall set the hearing date as soon as possible after the return is filed under section 4 of this chapter. The court shall inform the:

- (1) prosecuting attorney; and
- (2) person from whom the firearm was seized;

of the date, time, and location of the hearing. The court may conduct the hearing at a facility or other suitable place not likely to have a harmful effect upon the person's health or well-being.

Sec. 6. (a) At a hearing conducted under section 5 of this chapter, the state has the burden of proving all material facts by clear and convincing evidence.

(b) If the court determines that the state has proved by clear and convincing evidence that the person is dangerous, the court may order that the law enforcement agency having custody of the seized firearm retain the firearm. In addition, if the person has received a license to carry a handgun, the court shall suspend the person's license to carry a handgun. If the court determines that the state has failed to prove that the person is dangerous, the court shall order the law enforcement agency having custody of the firearm to return it to the person from whom it was seized.

(c) If a court orders a law enforcement agency to retain a firearm, the law enforcement agency shall retain the firearm until

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the court orders the firearm returned or otherwise disposed of.

Sec. 7. If the court determines that:

(1) a person is dangerous; and

(2) a firearm seized from the person is owned by another person;

the court may order the law enforcement agency having custody of the firearm to return the firearm to the owner.

Sec. 8. (a) At least one hundred eighty (180) days after the date a court orders a law enforcement agency to retain an individual's firearm under section 6 of this chapter, the individual may petition the court for return of the firearm.

(b) Upon receipt of the petition described in subsection (a), the court shall:

(1) enter an order setting a hearing date; and

(2) inform the prosecuting attorney of the date, time, and location of the hearing.

(c) The prosecuting attorney represents the state at the hearing.

(d) In a hearing under this section, the individual:

(1) may be represented by an attorney; and

(2) must prove by a preponderance of the evidence that the individual is not dangerous.

(e) If upon the completion of the hearing and consideration of the record the court finds that the individual is not dangerous, the court shall order the law enforcement agency having custody of the firearm to return the firearm to the individual.

(f) If the court denies an individual's petition under this section, the individual may not file a subsequent petition until at least one hundred eighty (180) days after the date on which the court denied the petition.

Sec. 9. If at least five (5) years have passed since the court conducted the first hearing to retain a firearm under this chapter, after giving notice to the parties and conducting a hearing, the court may order the law enforcement agency having custody of the firearm to destroy or otherwise permanently dispose of the firearm.

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COMMITTEE REPORT

Mr. Speaker: Your Committee on Public Safety and Homeland Security, to which was referred House Bill 1776, has had the same under consideration and begs leave to report the same back to the House with the recommendation that said bill be amended as follows:

Delete everything after the enacting clause and insert the following:

(SEE TEXT OF BILL)

and when so amended that said bill do pass.

(Reference is to HB 1776 as introduced.)

RUPPEL, Chair

Committee Vote: yeas 10, nays 0.

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HOUSE MOTION

Mr. Speaker: I move that House Bill 1776 be amended to read as follows:

Page 8, line 24, delete "firearm for not more than one year." and insert "**firearm.**".

Page 8, line 32, delete "court shall establish a date certain upon which the" and insert "**law enforcement agency shall retain the firearm until the court orders the firearm returned or otherwise disposed of.**".

Page 8, delete lines 33 through 35.

Page 8, line 42, delete "If the court has ordered the law enforcement agency" and insert "**At least one hundred eighty (180) days after the date a court orders a law enforcement agency to retain an individual's firearm under section 6 of this chapter, the individual may petition the court for return of the firearm.**

(b) Upon receipt of the petition described in subsection (a), the court shall:

- (1) enter an order setting a hearing date; and
- (2) inform the prosecuting attorney of the date, time, and location of the hearing.

(c) The prosecuting attorney represents the state at the hearing.

(d) In a hearing under this section, the individual:

- (1) may be represented by an attorney; and
- (2) must prove by a preponderance of the evidence that the individual is not dangerous.

(e) If upon the completion of the hearing and consideration of the record the court finds that the individual is not dangerous, the court shall order the law enforcement agency having custody of the firearm to return the firearm to the individual.

(f) If the court denies an individual's petition under this section, the individual may not file a subsequent petition until at least one hundred eighty (180) days after the date on which the court denied the petition."

Page 9, delete lines 1 through 30.

(Reference is to HB 1776 as printed February 11, 2005.)

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COMMITTEE REPORT

Madam President: The Senate Committee on Judiciary, to which was referred House Bill No. 1776, has had the same under consideration and begs leave to report the same back to the Senate with the recommendation that said bill be AMENDED as follows:

Page 6, line 31, after "person;" insert "**or**".

Page 6, line 33, delete "; or" and insert "**and the person:**

(A) has a mental illness (as defined in IC 12-7-2-130) that may be controlled by medication, and the person has not demonstrated a pattern of voluntarily and consistently taking the person's medication while not under supervision; or

(B) is the subject of documented evidence that would give rise to a reasonable belief that the person has a propensity for violent or emotionally unstable conduct."

Page 6, delete lines 34 through 37.

Page 7, line 2, delete "states under oath or affirmation" and insert "**provides the court a sworn affidavit:**

(A) stating why the law enforcement officer believes the person is dangerous and in possession of a firearm; and

(B) describing the law enforcement officer's interactions and conversations with:

(i) the person who is alleged to be dangerous; or

(ii) another individual, if the law enforcement officer believes that information obtained from this individual is credible and reliable;

that have led the law enforcement officer to believe the person is dangerous and in possession of a firearm;".

Page 7, delete lines 3 through 6.

Page 7, line 7, delete "statement" and insert "**affidavit**".

and when so amended that said bill do pass.

(Reference is to HB 1776 as reprinted February 16, 2005.)

BRAY, Chairperson

Committee Vote: Yeas 10, Nays 0.

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